



Newsletter

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Children and Families Committee to Meet in March

The Children, Families, Health, and Human Services Interim Committee will work on its three studies and hear about proposed legislation for pain patients when it meets on March 10-11 in Helena.

The committee will take up the Senate Joint Resolution 22 (2015) study of guardianship and Alzheimer's disease during the morning of March 10. Members will discuss the House Bill 422 (2015) study of children's mental health outcomes that afternoon. On March 11, the committee will work on the Senate Bill 418 (2015) study of legislative mental health investments before hearing from individuals concerned about the availability of treatment for chronic pain.

SJR 22: Guardianship/Alzheimer's Disease

For the SJR 22 study, committee members will hear several presentations covering the following topics:

- Policy suggestions from the Montana Alzheimer's Work Group.
- Examples of how two other states provide training to guardians.
- A program used in other states to evaluate on-the-ground guardianship practices.
- Financial planning in the realm of guardianship and ways to prevent the financial exploitation of a person under guardianship.

HB 422: Children's Mental Health Outcomes

HB 422 requires the committee to propose a pilot project to improve and track children's mental health outcomes. In January, the committee decided to focus on outcomes related to whether children are in school, at home, and out of trouble.

In March, mental health providers will discuss ideas for measuring outcomes in those three areas. The committee will also hear about the kinds of data that must be gathered for measurement.

SB 418: Legislative Mental Health Investments

The 2015 Legislature increased funding for several types of community mental health services. SB 418 requires the committee to monitor and evaluate how the Department of Public Health and Human Services is implementing the new funding.

DPHHS officials will outline how the money has been spent to date. They'll also review admissions data for the Montana State Hospital. A panel of providers will discuss whether DPHHS is meeting SB 418 objectives for paying for services and working with providers.

Other Topics

The committee's agenda will also include the following:

- An update from Dr. Eric Arzubi of the Billings Clinic on efforts to create a Montana training track for psychiatric medical students.
- A presentation on the proposed Pain Patients' Bill of Rights.
- An update from DPHHS Director Richard Oppen on the agency's activities.

Next Meeting

The committee will meet at 9 a.m. on March 10 in Room 137 of the Capitol in Helena. The meeting will continue at 8 a.m. on March 11. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

Commission on Sentencing to Continue Review

The Commission on Sentencing will meet in early March to continue its review of the state's criminal justice system with the Council of State Governments (CSG) Justice Center. The focus of the meeting will be presentations from the CSG staff on their data analysis, statute review, observations from site visits, and comparisons of Montana's justice system to the justice systems of other states. A review of the March meeting will be available in the April 2016 edition of *The Interim*.

Next Meeting

The commission will meet on March 1-2 in Room 172 of the Capitol in Helena. The meeting will start at 8:30 a.m. on March 1 and will continue at 8 a.m. on March 2. For more information on the commission's activities and upcoming meeting, visit the commission's website or contact Rachel Weiss, commission staff.

Commission Website: www.leg.mt.gov/cos

Commission Staff: rweiss@mt.gov or 406-444-5367

EAIC Suggests Auditor Work Group to Handle Study on Air Ambulances

At its Feb. 4-5 meeting, the Economic Affairs Interim Committee voted to ask the State Auditor's Office to consider forming a working group to bring insurers and air ambulance providers together with at least one consumer to find solutions to concerns about the high costs of balance billing and out-of-network air ambulance providers. The State Auditor's Office is putting that group together, according to staff at the office.

In other action, the committee members voted to remove an objection to a milk assessment rule being developed by the Board of Livestock, in part because a Board of Livestock member assured the committee that the rule as originally proposed was under review and could be changed to meet at least some concerns of small dairies and ice cream and cheese processors. The rule as proposed would impose assessments on the processors of milk products for the first time.

In other business, the committee heard about the following areas:

- Efforts in Missoula and Bozeman to provide an open-access delivery system in which broadband providers would use community-provided fiber to serve businesses and schools.
- "Zippered programs" being developed by the Montana University System and the Department of Labor and Industry to coordinate apprenticeships and internships as well as course curriculum to meet industry needs in Montana. Commissioner of Labor and Industry Pam Bucy and John Cech of the Montana University System introduced Kirk Lacey, who has been appointed jointly by the Department of Labor and Industry and the university system as director of industry driven workforce development partnerships, and they described efforts to provide dual credits to high school students as well as curriculum at two-year colleges that is tied to job-related requirements. Matt Springer of the RevUp program noted that the programs helped students earn wages more commensurate with the costs of their educational investments. Kaye Norris, who coordinates the HealthCARE Montana program, said that some students were provided free tutoring through coaches as the programs sought to allow students to build on their credentials to advance in or change a health care career.
- Details from the state's chief business development officer, John Rogers, about work by the governor's Main

Street Montana initiative and various economic development investments in the state. Specific discussions included projects funded by the Big Sky Economic Development Trust Fund Program and Growth Through Agriculture.

- An update as part of agency monitoring from Ron de Yong, director of the Department of Agriculture, about upcoming changes in pesticide applicator training, expansion interests related to the Food and Agricultural Development Centers, and funding concerns about a nursery inspection program. The committee also heard about the department's hail insurance program, which was questioned by two insurer representatives as to its purpose as a state program, among other concerns.

On the air ambulance study, House Joint Resolution 29 (2015), the committee voted to send letters to Montana's congressional delegation asking for changes in the Airline Deregulation Act that would allow more state input related to air ambulance billing. The committee heard perspectives from both insurers and air ambulance providers related to billing disagreements and costs related to air ambulance services. The committee recommended that both industries work with the State Auditor's Office to develop solutions and to bring those solutions back to the committee at future meetings.

Next Meeting

The committee will meet at 8:30 a.m. on April 14 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Pat Murdo, committee staff.

Committee Website: www.leg.mt.gov/eaic

Committee Staff: pmurdo@mt.gov or 406-444-3594

ETIC to Focus on Net Metering Cap and Other Incentives

At its March 11 meeting, the Energy and Telecommunications Interim Committee will continue with its net metering study and also focus on its study of next-generation 9-1-1 (NG911) in Montana.

HJR 7: Next-Generation 9-1-1 Study

The ETIC, as guided by House Joint Resolution 7 (2015), is reviewing next-generation 9-1-1. The committee has asked stakeholders to work together on NG911 and to provide the ETIC with recommendations on planning for and implementing NG911. Since September 2015, 9-1-1 stakeholders have met monthly to discuss NG911, which can enhance public safety in Montana. They, along with an advisory council formed by the governor, will provide the ETIC with recommendations in March.

NG911 stakeholders are developing a Montana-specific definition of NG911 to assist the Legislature in planning for NG911. Next-generation 9-1-1 continues to evolve with technological advances. A multitude of state and federal regulatory policies will guide the implementation of next-generation 9-1-1, and financial planning will also be critical. Stakeholders have found that planning and implementing NG911 will likely require coordination and partnerships among government agencies, private entities, and multiple public safety stakeholders. Implementing NG911 may also require an in-depth review of budgetary considerations, governance structures, and regulations needed to address emerging technologies.

The 9-1-1 Advisory Council is working on legislative concepts to update Montana's 911 program to ensure that the program supports current legacy 911 systems and services as well as the future deployment of NG911 systems and services. The council's recommendations focus on jurisdiction, governance, technology, and funding of the overall 9-1-1 program.

SJR 12: Net Metering Study

The ETIC continues to review aspects of Montana's net metering law in accordance with Senate Joint Resolution 12 (2015). At the March meeting, the committee will hear from the Montana Department of Environmental Quality about grant and loan programs available to net-metered customers. For example, Montana provides loans to individuals, small businesses, units of local government, units of the university system, and nonprofit organizations to install alternative energy systems that generate energy for their own use or for capital investments for energy conservation purposes when done in conjunction with alternative energy systems. Since the program began, DEQ has issued loans for about 188 net-metered projects, out of the 330 loans funded.

Also at the March meeting, the Montana Department of Revenue will discuss tax credits and abatements used by taxpayers who have distributed generation systems. In Montana, for example, an alternative energy systems credit allows residential taxpayers who install renewable energy systems, such as net-metered systems, on their property to seek a tax credit equal to the investment and installation cost, up to \$500 per individual. The amount of this credit in 2013 was \$4.6 million, and in 2014 it was \$4.4 million.

The committee will also spend time discussing the SJR 12 study information received to date. The committee has gathered information from stakeholders about the costs and benefits of net metering in Montana, learned about various rate design methodologies, reviewed the economic development impacts of net metering, and analyzed safety

and stability issues related to distributed generation. With the information, the committee members will begin focusing on potential study findings and recommendations for further review in May.

Next Meeting

The ETIC will meet on March 11 at the Capitol in Helena at a time to be determined. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sonja Nowakowski, committee staff.

Committee Website: www.leg.mt.gov/etic

Committee Staff: snowakowski@mt.gov or 406-444-3078

111d Subcommittee on Hold

After the U.S. Supreme Court halted implementation of the federal Clean Power Plan, a legislative subcommittee that was tracking implementation of the plan in Montana put its March meeting and future meetings on hold.

Last year, the ETIC, in conjunction with the Environmental Quality Council, agreed to form a subcommittee to work with state agencies in Montana to examine how the state should respond to a federal Clean Power Plan. On Feb. 9, the U.S. Supreme Court granted a stay of the U.S. Environmental Protection Agency's Clean Power Plan until the U.S. Court of Appeals for the D.C. Circuit rules on the plan's legality.

The stay means that, for now, the requirement for states to submit a compliance plan or a plan with a request for an extension by September 2016 is on hold until a final decision by the U.S. Court of Appeals for the D.C. Circuit, or by the U.S. Supreme Court, is made.

In November, Governor Bullock issued an executive order creating a Clean Power Plan Advisory Council to assist the Montana Department of Environmental Quality as it developed information to submit to the EPA for compliance with the federal rule. The council included 27 members and was expected to meet in February. Sen. Duane Ankney (R-Colstrip), Sen. Jim Keane (D-Butte), and Sen. Mike Phillips (D-Bozeman) were appointed to the council. However, with the stay issued by the U.S. Supreme Court, Governor Bullock also announced that the work of the advisory council would be on hold.

Sen. Keane, 111d Subcommittee presiding officer, and Rep. Keith Regier (R-Kalispell), vice presiding officer, agreed after Governor Bullock's announcement that the subcommittee's work would also be on hold.

EQC to Discuss Recommendations in March

The Environmental Quality Council meets on March 9-10 to begin discussing recommendations related to its study of federal roads, inaccessible public lands, and big game.

As part of its study of federal land and road management, the bipartisan EQC will review the first draft of a committee report and begin formulating findings and recommendations, if any. The 2015 Legislature passed House Joint Resolution 13, sponsored by Rep. Kerry White (R-Bozeman). HJR 13 tasks the EQC with assessing road closures on federal lands over the past 35 years, identifying landlocked parcels of public land, and evaluating deer and elk harvest trends in relation to limited access to federal lands.

The departments of Environmental Quality, Natural Resources and Conservation, and Agriculture will present environmental compliance and enforcement reports. The law requires the agencies to summarize activities to promote compliance, describe the regulated community for specific programs and estimate what percentage is in compliance, and detail noncompliant actions.

The manager of the Montana Sage Grouse Habitat Conservation Program will provide an update on work to implement the Montana sage grouse conservation strategy. The strategy includes stipulations for new development in sage grouse habitat and a competitive grant program for conservation measures. Gov. Bullock directed that the strategy be fully implemented by Jan. 1, 2016.

As part of its duty to oversee the work of the departments of Environmental Quality, Natural Resources and Conservation, and Fish, Wildlife, and Parks, the EQC is evaluating specific programs within each agency. Programs on the March agenda include habitat management in the FWP's Wildlife Division and forest management in the DNRC's Trust Land Management Division. Comments are encouraged from anyone with an interest in the programs.

The council is also tracking legislation in the states of Washington and Oregon that would impact those states' continued use of coal-fired generation from the Colstrip Generating Station. The council sent Sen. Jim Keane (D-Butte) and Sen. Rick Ripley (R-Wolf Creek) to Olympia, Washington, to attend a hearing on Washington Senate Bill 6248 on Jan. 20.

Next Meeting

The council will meet on March 9-10 in Room 317 of the Capitol in Helena. The meeting will begin at 10 a.m. on March 9. For more information on the council's activities and upcoming meeting, visit the council's website or contact Joe Kolman, council staff.

Council Website: www.leg.mt.gov/eqc

Council Staff: jkolman@mt.gov or 406-444-3747

Judicial Redistricting Commission Reviews Judicial Workload, Considers Next Steps

The Judicial Redistricting Commission met in early February to review updated judicial workload figures and to consider next steps in its House Bill 430 (2015) study of the necessity of judicial redistricting.

Julianne Burkhardt, a legislative staff attorney, presented the results of her survey of Montana laws that assign a priority to certain case types or judicial actions. The commissioners had requested information on those assigned priorities at its initial meeting in September 2015.

Court Administrator Beth McLaughlin then answered another question that commissioners had posted at the September meeting: how many cases are presided over by a judge who is not from the district in which the case was filed? After reviewing the 2015 case filings, McLaughlin determined that only 138 cases out of about 52,000 cases, or less than one-half of 1 percent, were handled by a judge from a different district. These cases typically occurred in single-judge districts simply because in those districts the case cannot be assigned to another judge.

McLaughlin also discussed the updated judicial workload numbers for 2015, noting that the district courts experienced an overall increase from 2014 of about 3,000 cases. According to McLaughlin, the troubling number is the increase in dependent/neglect cases, which typically are the most time-consuming cases for a judge. Those cases went up by about 700 cases. Another growth area was criminal cases. She stressed that it was too early to know whether 2015 was an outlier or if the increases would continue, an uncertainty that makes looking at the multiyear trend data she provided important.

After the workload presentation, commission staff member Rachel Weiss reviewed several maps she created to help the commissioners consider some of the data in geographic context.

The Road Ahead

The commissioners then discussed the next steps for the commission, including whether the commissioners should consider proposals to change district lines or whether they were ready to recommend that the 2017 Legislature add judges in certain existing districts and leave district lines as is. Commissioners agreed to meet again in early April to consider any proposals to change district lines, and they set a Feb. 12 deadline to send those proposals to commission staff.

At the next meeting, the commissioners will review and take public comment on any district line change proposals and again consider the next steps for the commission. A meeting agenda, the text of any proposals, and staff analysis of the proposals will be available to the public in late March. Comments on the proposals can be made at the April meeting or in writing via e-mail, postal mail, or fax using the following contact information:

Judicial Redistricting Commission

c/o Legislative Services Division

PO Box 201706

Helena, MT 59620

Fax: 406-444-3036

Email: rweiss@mt.gov (include "Judicial Redistricting Commission public comment" in the subject line)

Public comment provided in person to the committee is a public record that is videotaped, archived, and available on the Internet. Public comment submitted in writing at a committee meeting is a public record that will be posted to the legislative website as part of the minutes log for the committee meeting. Written comments submitted to the commission by other means are also considered a public record pursuant to Montana law and may be subject to public disclosure under the right-to-know provisions of the Montana Constitution.

Next Meeting

The commission will meet on April 6 in Room 102 of the Capitol in Helena at a time to be determined. An agenda and other meeting materials, including any proposals from the commissioners to revise district lines, will be available in late March. For more information on the commission's activities and upcoming meeting, visit the commission's website or contact Rachel Weiss, commission staff.

Commission Website: www.leg.mt.gov/jrc

Committee Staff: rweiss@mt.gov or 406-444-5367

Law and Justice Interim Committee Set to Meet in March

The Law and Justice Interim Committee will meet again in early March to continue its interim work. The February 2016 issue of *The Interim* contained a preview of the meeting, and a review of the meeting will be available in the April 2016 issue of *The Interim*.

Next Meeting

The LJIC will meet on March 8-9 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Rachel Weiss, committee staff.

Committee Website: www.leg.mt.gov/ljic

Committee Staff: rweiss@mt.gov or 406-444-5367

Legislative Audit Committee Reviews 20 Audits

The Legislative Audit Committee met on Feb. 2-3 to review 20 recent financial, financial-compliance, information systems, and performance audits of state agencies and programs, described below.

Information Systems Audit

- An information systems audit of Montana Lottery Security (15DP-02) found security controls are in place in areas outlined by statute. The audit also identified controls that may be strengthened and made five recommendations. These included creating and improving policy related to background checks and the ineligible player list, documenting investigative activities, analyzing retailer data, reviewing lottery winner data, adding to retailer review, and improving building security.

Performance Audits

- A performance audit of the Montana University System (MUS) workforce data reporting (14P-05) found that the MUS employs more than 8,500 full-time equivalent and spent more than \$350 million in unrestricted funds on personal services during fiscal year 2015. Three recommendations were made to improve the ability of policy-makers to monitor and understand trends in university workforce data that the Montana Board of Regents, the Office of the Commissioner of Higher Education, and MUS units should (1) develop a system-wide consistent approach for categorizing staff positions, (2) review current human resource data for accuracy, and (3) implement a statewide interpretation of national reporting metrics.
- A performance audit of the Office of Consumer Protection (OCP) (14P-08) found that the OCP has engaged in some strategic planning and monitoring of program activities, but improvements are needed in these and other fundamental organizational development areas to ensure that work to protect Montana's consumers is being accomplished efficiently, effectively, and consistently. The audit also recommended additional improvements to ensure that program accomplishments reported by the

OCP, such as money refunded to consumers, are based on accurate data.

- Seventeen recommendations were made in the Licensing Real Estate Professionals (15P-01) Performance Audit. The audit found that the Department of Labor and Industry and the Board of Realty Regulation need to make improvements to address problems with license applications, continuing education requirements, fees and funding, data accuracy, and decision-making.

Contracted Financial-Compliance Audits (completed by outside accounting firms)

- An unmodified opinion on the financial statements was issued in a Montana University System Workers' Compensation (15C-04) financial-compliance audit and no recommendations were made.
- An unmodified opinion on the financial schedules was issued in a State of Montana Legislative Branch, Excluding the Consumer Counsel, (15C-11) financial-compliance audit and no recommendations were made.
- A State of Montana Consumer Counsel (15C-11) financial-compliance audit contained an adverse opinion on the financial schedules but no recommendations were made.

Financial-Compliance Audits (by the Legislative Audit Division)

- A Montana Board of Housing (15-07A) financial-compliance audit contained one recommendation to the board related to internal controls over financial reporting. According to the audit, the board did not have adequate internal controls in place to ensure accurate and complete financial reporting for fiscal year 2015.
- Three recommendations were made in the financial-compliance audit of the Department of Labor and Industry (15-15). The recommendations related to federal and state compliance requirements of the Unemployment Insurance Program, specifically in the areas of tax rate setting, federal reporting, and cash management.
- A financial-compliance audit of the Department of Fish, Wildlife and Parks (15-18) made no recommendations.
- A financial-compliance audit of the Office of Public Instruction (15-19) made three recommendations. The first related to deficiencies that resulted in errors in the allocations of Title I, Title IIA, and IDEA B federal funds to local education agencies. The remaining recommendations related to noncompliance with federal regulations over cash management and noncompliance with state law in regard to the office's internal service fund.

- A financial-compliance audit of the Office of the Commissioner of Higher Education (15-20) resulted in three recommendations to the office, including one related to expending funds on behalf of programs lacking budget authority in advance of obtaining and recording a budget amendment.
- A financial-compliance audit of the Montana State Lottery (15-30A) made no recommendations.

Financial Audits

The committee heard reports on six financial audits, listed below, with unmodified opinions, indicating the reader can rely on the fairness of the information presented:

- Montana Board of Investments (14-04B)
- Public Employees' Retirement Board (14-08B)
- Teachers' Retirement Board (14-09B)
- Montana Guaranteed Student Loan Program (15-06)
- University of Montana (15-10A)
- Montana State University (15-11A)

For additional information on specific audits listed above, contact the LAD office or check the LAD website and refer to the numeric identifiers listed in parentheses after the audit titles. The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance, and cost of government policies, programs, and operations. The division is responsible for conducting financial, financial-compliance, performance, and information system audits of state agencies and programs, including the Montana University System.

LAD Website: www.leg.mt.gov/audit

LAD Phone Number: 406-444-3122

Legislative Council Considers a Range of Topics, Requests Legislator Input on Legislative Rules

At its meeting on Feb. 9 in Helena, the Legislative Council focused on many areas, including administrative rule review, legislator pay and stipends, preparation for the 2017 legislative session, and options for expanding TVMT. The council also appointed a Rules Subcommittee.

Administrative Rules

At the February meeting, Todd Everts, legal director for the Legislative Services Division, presented on administrative rule review topics, including the recent interim committee polls and results, examples of general and specific rulemaking authority, and the separation of powers. The council asked staff to develop best practices for interim committees for

polling and for interim committee review of administrative rules. Council members are also interested in hearing from the executive branch regarding the branch's perspective on rulemaking.

Legislator Pay

Susan Fox, LSD executive director, presented information on legislator pay and proposed guidelines for the stipend established by Senate Bill 283 (2015), which will become effective in July 2017. Council members requested an update on surrounding states' legislator pay as well as information on state employee pay and statewide average income. Options will be developed for the council to consider at the next meeting, which will be held in May.

Session Planning: Save the Dates!

Also at the February meeting, the council adopted dates related to preparing for the 2017 legislative session:

- Caucus: Nov. 16, 2016 (morning).
- Training and orientation: Nov. 16 (afternoon) through Nov. 18, 2016.
- Rules committees: Dec. 7, 2016 (morning).
- Presiding officer training: Dec. 7, 2016 (afternoon).
- Budget training, 2019 Biennium Budget review, and other topics: Dec. 8, 2016.

The council considered a session calendar and asked for additional options to be presented at the May meeting. The first day of the 2017 session is Monday, Jan. 2, 2017, and the House and Senate will convene at noon.

TVMT

K'Lynn Sloan-Harris and Susan Fox of Legislative Services presented ideas for the council's consideration on how to expand the use of TVMT for more public outreach. Stephen Maly presented the Helena Civic Television perspective. Staff will be working on options and an analysis of whether additional resources would be needed to expand programming.

Rules Subcommittee

Rep. Chuck Hunter (D-Helena), presiding officer of the Legislative Council, appointed a Rules Subcommittee to consider any changes to the Joint, House, or Senate Rules for the 2017 session. Rep. Hunter appointed Rep. Bryce Bennett (D-Missoula) as presiding officer and Rep. Stephanie Hess (R-Havre), Sen. Edward Buttrey (R-Great Falls), and Sen. Tom Facey (D-Missoula) as members of the subcommittee.

The council is soliciting ideas from legislators and staff for potential rule changes to be considered. The subcommittee will meet on Thursday, May 19, before the full Legislative Council

meeting. Any recommended changes will be drafted in bill form and forwarded to the 2017 leadership and to the Rules Committees. The Rules Committees are scheduled to meet Wednesday, Dec. 7, 2016, and will request legislation for the rules to be considered by the 2017 Legislature.

Call for Legislator Input on Rules

The Legislative Council Rules Subcommittee is seeking information from legislators on potential rules changes or areas of concern in the Joint Rules, House Rules, or Senate Rules.

Any legislator wishing to provide comments, questions, or ideas on rules changes or ideas for training and other ways to help legislators use the legislative rules should contact Todd Everts (teverts@mt.gov) or Susan Fox (sfox@mt.gov).

Looking Ahead

The council will hold its next scheduled meeting in May. Anticipated agenda items include the following topics:

- Legislator pay and implementation of the SB 283 stipend.
- Continued discussion on administrative rules.
- TVMT proposals.
- Remote meeting possibilities.
- Planning for the 2017 session, including branch budget development.
- Revised proposed guidelines for legislator appointments.
- E-mail best practices for legislators.
- Legislative space.
- Rules Subcommittee.

Note: The council has changed the date of its August meeting to Aug. 24-25. The focus of this meeting will be adoption of the legislative branch budget, suggested changes to the Joint, House, and Senate Rules, and any legislation to be sponsored by the Legislative Council.

Next Meeting

The council will meet on May 19-20 at the Capitol in Helena at a time to be determined. For more information on the council's activities and upcoming meeting (including the meeting agenda and materials), visit the council's website or contact Susan Byorth Fox, council staff.

Council Website: www.leg.mt.gov/legcouncil

Council Staff: sfox@mt.gov or 406-444-3066

Full Agenda for Legislative Finance Committee in March

The Legislative Finance Committee has scheduled its next meeting for March 10-11. Reports on the following topics will be presented at this meeting:

- 2017 Biennium Budget status report.
- Legislative budget policy choices.
- Medicaid monitoring.
- SB 405: Medicaid expansion.
- Medicaid volatility: Montana's history and other states' approaches.
- Child and Family Services Division update.
- HJ 27: statutory appropriations interim study.
- Comparison between benefit plans and large employer plans.
- State Information Technology update.
- Build or lease report.
- HJ 8: Montana Law Enforcement Academy interim study.

The LFC has invited Gov. Bullock's budget director to provide a budget report. The budget status report will be given by Legislative Fiscal Division staff and will include an update on general fund revenues compared to House Joint Resolution 2 (2015) and analysis of all agency expenditures to date. LFD staff will provide the committee with budget policy choices for describing the personal services budgets and zero-based budgeting in the 2019 budget analysis. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Legislative Fiscal Analyst Amy Carlson.

Committee Website: www.leg.mt.gov/lfc

Committee Staff: acarlson@mt.gov or 406-444-2988

RTIC to Meet March 10-11

At its upcoming March meeting, the Revenue and Transportation Interim Committee will continue work on its nine chosen study topics, receive agency updates from assigned agencies, and hear a general fund revenue collection update as part of its revenue estimating and monitoring duties.

Committee Studies

The agenda topics for each study are summarized below.

Tax Increment Financing Districts Study

Work on the tax increment financing (TIF) districts study (Senate Joint Resolution 31) will cover a number of topics at the March meeting, including a presentation from former legislator and former Department of Revenue director Kenneth Nordtvedt about who pays for tax increment financing, an overview of TIF remittance laws and discussion of changes during the 2015 legislative session to how a school district must use a remittance, and an overview of a bill heard during the 2015 session to exempt the 95 school equalization mills from tax increment financing.

The committee work plan also calls for public comment on alleged “abuses by local governments or taxing jurisdictions or TIF district or TED district boards in approving projects or policies contrary to the spirit and letter of state statutes or TIF district or TED district board governing documents.” Those wishing to comment on this topic should contact committee staff. There will also be time for public comment on any aspect of TIF districts.

Highway State Special Revenue Account Study

The March meeting will include follow-up information requested at the previous meeting on the following topics:

- How highway state special revenue account funds are distributed to the Department of Transportation, the Department of Justice, and local and tribal governments.
- The average gas tax raised from a typical vehicle and driver.
- Electric vehicle fees in other states.
- State use of toll roads and federal law regarding toll roads.
- Modeling of changes to taxation of dyed diesel fuel.

In addition, the Department of Transportation will provide answers to questions about the target balance for the highway state special revenue account, how much project money goes to nonconstruction expenses, and how citizens perceive Montana’s highways.

Elderly Homeowner/Renter Credit Study

The study of the elderly homeowner/renter income tax credit will continue with presentations on properties eligible for the credit, the average amount of the credit received, and an analysis of nursing home rates and property tax exemption status. (For more information on the elderly homeowner/renter credit, see “The Back Page” at the end of this newsletter.)

Adequacy of Local Government Revenue-Generating Capacity Study

Agenda items for the adequacy of local government revenue-generating capacity study include an overview of property taxes as a portion of city and county budgets and presentation of a sales and services tax model with a local option.

Treatment of Intangible Property for Centrally Assessed Property Valuation

The committee will receive a presentation on court cases addressing the treatment of intangible property for this study.

Property Taxable Value Neutrality

Agenda items for the study on property taxable value neutrality include an overview of agricultural property valuation and information on how nonqualified agricultural property is valued.

Nonprofit Reporting of Community Benefits Study

The committee will receive a report on the information contained in an Internal Revenue Service Form 990 for the study of nonprofit reporting of community benefits.

Tax Liens and Tax Deeds Study

This is the first meeting during which the committee will work on the tax liens and tax deeds study. There will be a presentation on the current tax lien and tax deed process so that committee members are familiar with the process when recommendations from a working group are received at the June meeting.

Taxation of International Corporations Doing Business in Montana Study

The committee will receive information on corporate income tax water’s-edge election, the tax haven list contained in statute, and foreign direct investment from representatives of the Council on State Taxation, the Department of Revenue, and the Montana Taxpayers Association and from former legislator Ron Erickson, sponsor of the bill to create the tax haven list.

Agency Monitoring

Agency monitoring reports at the March meeting will include updates from the Department of Revenue, the Department of Transportation, and the Montana Tax Appeal Board. The Department of Transportation will present required reports on biodiesel refunds and compliance with special fuel laws, discuss federal highway funding and 2015 crash data, and give an update from the Aeronautics Division.

Revenue Estimating and Monitoring

Legislative Fiscal Division staff will present a general revenue collection update and will also update the committee on improvements to the revenue estimate process. In addition, committee members will receive information from committee staff about how the joint revenue subcommittee of the 2015 legislative session was formed and options for recommending a similar committee in the next legislative session.

Next Meeting

The committee will meet on March 10-11 in Room 102 of the Capitol in Helena. The meeting will begin at 8 a.m. each day. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Megan Moore, committee staff.

Committee Website: www.leg.mt.gov/rtic

Committee Staff: memoore@mt.gov or 406-444-4496

School Funding Interim Commission Sets Spring Meetings

The School Funding Interim Commission has scheduled its next meetings for early April and early May in Helena, to be followed by its final meeting of the interim in early June.

At its April meeting, the commission will continue to explore school funding issues related to facilities, recruitment and retention, special education, and district structure.

Next Meeting

The committee will meet on April 4-5 at the Capitol in Helena at a time to be determined. For more information on the commission's activities and upcoming meeting, visit the commission's website or contact Pad McCracken, commission staff.

Commission Website: www.leg.mt.gov/sfc

Commission Staff: padmccracken@mt.gov or 406-444-3595

State Administration Committee Narrows Focus of Personal Information Ownership Study

At its meeting in February, the State Administration and Veterans' Affairs Interim Committee focused most of its attention on the House Joint Resolution 21 (2015) study of personal information ownership. Some of the other activities at the meeting included committee action on election law cleanup and rule review matters.

HJR 21: Personal Information Ownership Study

The committee received a legislative research report on the legal theories and model principles that have been offered by various scholars who argue that property rights (as opposed to privacy rights) should guide policymaking concerning the collection, use, and distribution of personal information. The model principles offered encompass the following common themes:

- Notice – Individuals should have reasonable notice that their data are being collected and should be clearly informed about how it will be used.
- Choice – Individuals should be able to opt out of (or be required to opt into) the collection and forward transfer of their personal information to third parties.
- Onward Transfer – Transfers of data to third parties should occur only with the individual's consent and only to other organizations that follow adequate data protection principles and who use the information for the same purpose for which it was initially collected.
- Security – Reasonable efforts should be made to prevent unwanted breaches of databases containing the collected information.
- Data Integrity – Data collected and transferred should be relevant and reliable.
- Access – Individuals should be able to access information held about them and to correct or delete the information if it is inaccurate.
- Enforcement – There should be an effective means of enforcing these rules.

The committee also heard from Jason Gregoire, chair of the Health Law Section of the New Hampshire State Bar. His testimony was invited after the committee reviewed an article by the George Washington University's Hirsh Health Law and Policy Program that identified New Hampshire as the only state with language in its health care information law stating that health information is the "property" of the patient. Gregoire's presentation revealed that the language had not, to Gregoire's knowledge, actually changed how personal health information was collected, used, and distributed in New Hampshire or made New Hampshire law unique in this area. However, he agreed to find out more about the original intent of the language and forward his findings to the committee for the next meeting.

During a work session on the HJR 21 study, the committee decided that — in conjunction with continued exploration of property rights with respect to personal information — further research and testimony should be focused as described below.

Trade Practices and Consumer Protection

- Examine the potential economic impacts on businesses of requiring in state law that a customer provide affirmative consent (i.e., opt in) before a business may collect, use, or share a customer's personal information.
- Examine requiring in state law that businesses with an online presence inform customers about the business's information practices (i.e., what personal information is collected, how it will be used, and whether it will be passed on to third parties).
- Examine requiring in state law that individuals be allowed to access and correct or delete their personal information held by a business.
- Examine tightening Montana's security breach notification laws in this area.
- Examine how best to provide for the enforcement of these requirements.

Financial and Insurance Information

- Examine Montana's current law that allows personal or privileged information to be shared for certain purposes without the affirmative consent of the individual and how and with whom that information is currently shared.
- Examine tightening Montana's security breach notification laws in this area.
- Examine how best to provide for the enforcement of these requirements.

Health Information

- Examine whether Montana health information law should be more stringent than the federal HIPAA (Health Insurance Portability and Accountability Act) to provide individuals with more control over their health information.
- Consider whether and how to make the law consistent with respect to health care entities that are not covered by HIPAA.
- Specifically examine 50-16-812, MCA, and consider amendments that would ensure the statute does not violate HIPAA.
- Specifically examine how to address and define business associates with respect to the sharing of protected health information.
- Examine how best to provide for state-level policing and enforcement and consider amendments that would make state penalties for violations at least match the federal penalties.

Government Information

- Identify and examine whether state agencies are exempt from following the information management guidelines developed by the State Information Technology Division.
- Examine whether there are penalties if a state agency violates the guidelines.
- Specifically examine Title 50, chapter 16, part 6, MCA, concerning government health care information and consider amendments to clarify that state agencies must still comply with HIPAA.

Election Law Cleanup: HB 84 (2015)

The committee voted to consider a bill draft proposing various amendments to clarify and clean up election laws affected by the passage of the committee's 2015 general revision bill, House Bill 84. The clean-up provisions to be contained in the initial bill draft (with the understanding that additional provisions may be added if needed) include the following:

- Clarification that an election of local government study commission members would be held only if the study is approved by the electorate.
- Clarification that an election requested by petition on a local government ordinance must be held in conjunction with the next local government election.
- A provision that allows a local government study approved by voters to be canceled if there are not enough candidates for the study commission.
- Reinsertion of language that requires that in the case of a resort tax election the governing body of the resort area provide public notice of the goods and services that would be subject to the resort tax.
- A provision that addresses the terms of office for special district trustees to bridge the gap created by moving their election from November to May when the school district elections are held.

Rule Review Matters

The committee adopted a letter documenting the results of the legislative poll about whether 16 campaign finance rules adopted by the Office of the Commissioner of Political Practices conformed to legislative intent. A majority of legislators responding to the poll indicated they thought the rules did conform to legislative intent.

A motion was made by Sen. Doug Kary (R-Billings) to object to and delay the effective date of a rule proposed by the Office of the Secretary of State setting certain fees (see MAR Notice No. 44-2-214). Sen. Kary stated that the Secretary of State's Office had not provided him with requested information about how a certain fee would be set and what the amount

of the fee would be over time. Although the motion failed, Sen. Kary renewed his request for the information and staff informed the committee that if a majority of members sent an objection letter to the committee's presiding officer, statute provides that the letters would constitute an objection that would delay the effective date of the rule and require that the matter be placed on the committee's agenda for the next meeting.

Next Meeting

The committee will meet at 9 a.m. on April 19 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sheri Scurr, committee staff.

Committee Website: www.leg.mt.gov/sava

Committee Staff: sscurr@mt.gov or 406-444-3596

State-Tribal Relations Committee Travels to Fort Peck and Rocky Boy's Reservations

The State-Tribal Relations Interim Committee will be on the road in March visiting the Fort Peck and Rocky Boy's reservations as the Legislature's liaison with tribal governments.

The STRC will meet with the Fort Peck Tribal Executive Board on March 22 in Poplar and with the Chippewa Cree Business Committee of the Rocky Boy's Reservation on March 24 in Box Elder. The purpose of the joint sessions is to learn about issues of mutual concern as well as those of particular importance to the tribes.

The STRC will also meet with representatives of the Rocky Mountain Tribal Leaders Council to learn about the council's priorities and initiatives, including a grant received to train state and tribal employees on the Indian Child Welfare Act (ICWA).

The STRC is studying ICWA this interim as part of its work plan. On the afternoon of March 22, the committee is scheduled to hear perspectives on the state's implementation of ICWA from a district court judge, a county attorney, the Department of Justice, and tribal representatives.

During the week, the STRC will also receive updates on suicide prevention, protections for cultural patrimony, Indian language immersion and preservation programs, and the status of and funding for rehabilitation of the St. Mary Diversion Dam and Canal Headworks project.

Next Meetings

The STRC will meet on the following dates in March:

March 22, Fort Peck Community College auditorium, Poplar
Approximately 9 a.m. to 5 p.m.

March 23, Northern Winz Casino, Box Elder
Approximately 1 to 5 p.m.

March 24, Northern Winz Casino, Box Elder
Approximately 8 a.m. to noon

An agenda and meeting materials will be posted approximately 2 weeks in advance of the visits. For more information, please visit the committee's website or contact Hope Stockwell, committee staff.

Committee Website: www.leg.mt.gov/tribal

Committee Staff: hstockwell@mt.gov or 406-444-9280

Task Force on State Public Defender Operations Delves into Study Areas

The Task Force on State Public Defender Operations met on Feb. 1, 2016, in Helena. Task force members continued their examination of the operations of the Office of the State Public Defender as directed under House Bill 627 (2015). The meeting covered a range of topics, including federal public defenders, information about other states' public defender offices, legal distinctions between attorney-employees and independent attorney-contractors, and options for reducing the number of crimes for which jail time is a possibility, each of which bears on the operations of the Office of the State Public Defender, prosecutors, and the judiciary.

OPD staff presented additional information on employees, contractors, caseloads, efficiency measures, and options for improving operations of the OPD. Through an online survey, the task force has received more than 100 comments and suggestions from stakeholders regarding what works well with the OPD, what doesn't work so well, and what might be done to improve OPD operations. The survey, which seeks input from individuals involved in various aspects of the indigent defense system, remains open through Feb. 29 on the task force's website.

Next Meeting

The task force will meet on May 16 in Room 137 of the Capitol in Helena at a time to be determined. For more information on the task force's activities and the upcoming meeting, visit the task force's website or contact Dave Bohyer, task force staff.

Task Force Website: www.leg.mt.gov/tfspdo

Task Force Staff: dbohyer@mt.gov or 406-444-3592

Water Policy Committee to Hear Water Infrastructure Needs

Montana's aging water supply and water storage infrastructure are expected to highlight the Water Policy Interim Committee's March 7-8 meeting.

The committee will discuss a 2014 report from the American Society of Civil Engineers that estimates it will require billions to replace the state's water, wastewater, and irrigation canal infrastructure. The report (which is available at www.infrastructurereportcard.org) also examines the need for public investment in schools, transportation, transit, and solid waste.

At its March meeting, the WPIC will also focus on its three major studies: assumption of the federal section 404 permitting program, water availability and supply issues, and the future of the Water Court.

As part of the committee's water availability study, an official from the city of Bozeman will describe how that city has prepared to expand its water resources in the face of continued growth.

The committee will also narrow its consideration of certain topics for the future of the Water Court, including problems with water right ownership updates, the duties of water commissioners, the need for "living decrees," and the jurisdictional scope of the court.

Next Meeting

The committee will meet on March 7-8 in Room 172 of the Capitol in Helena. The meeting will begin at 9 a.m. on March 7 (discussion on water infrastructure will begin after 1 p.m.). For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Jason Mohr, committee staff.

Committee Website: www.leg.mt.gov/water

Committee Staff: jasonmohr@mt.gov or 406-444-1640

The Back Page

The Elderly Homeowner/Renter Income Tax Credit: Time for Change?

by Megan Moore, Research Analyst
Montana Legislative Services Division

With income tax filing season in full swing, now is the time that taxpayers think about which tax credits they are eligible to claim. For some taxpayers who are age 62 or older, the residential property tax credit for the elderly is the only reason to file a tax return: these taxpayers owe no income taxes, but they are eligible for an income tax refund for property taxes they have paid. In the past year or two, however, the Montana Department of Revenue has notified a number of taxpayers who have previously received the credit that they are not eligible for the credit. This article explores the eligibility requirements and history of the residential property tax credit for the elderly, commonly referred to as the elderly homeowner/renter credit.

General Eligibility

The elderly homeowner/renter credit is an income tax credit based on the amount of property taxes paid. An elderly citizen who wishes to claim the credit pays property taxes as usual to the county treasurer or as a component of rent payments and files for the credit along with the individual income tax filing.

To receive the credit, the taxpayer must meet all of the following basic eligibility requirements:

- Reached age 62 or older during the claim period.
- Resided in Montana for at least 9 months of the claim period.
- Occupied one or more dwellings as an owner, renter, or lessee for at least 6 months.
- Earned less than \$45,000 in gross household income.

The statute also requires that the taxpayer own or rent the homestead for which the credit is claimed. A homestead is defined as (1) a single-family dwelling or a unit of a multiple-unit dwelling that is subject to property taxes in Montana and as much of the surrounding land (up to 1 acre) necessary for its use as a dwelling or (2) a single-family dwelling or unit of a multiple-unit dwelling subject to property taxes that is rented from a county or municipal housing authority.

The definition of the term “homestead” requires that the dwelling be subject to property taxes in Montana unless it is rented from a housing authority. Some nursing homes in Montana are exempt from property taxes while others are not. Property tax exemptions are granted by the Department of

Revenue based on statute, which allows a property tax exemption for property used exclusively for nonprofit health care facilities licensed by the Department of Health and Human Services. Residents of nursing homes may not know whether their particular facility is exempt from property taxes.

Provisions of the law also provide that any portion of property taxes or rent paid with a subsidy is not eligible for the credit.

Calculating the Credit

The elderly homeowner/renter credit is based on property taxes billed or on rent-equivalent tax paid, which is defined as 15 percent of gross rent. Only otherwise eligible taxpayers with gross household income below \$45,000 are eligible for the credit. Gross household income is all income received by all individuals of a household while they are members of the household. The calculation of the credit is made, however, on household income, which is equal to gross household income minus a standard exclusion of \$6,300.

For those with household income between \$12,000 and \$34,999, the credit is for property taxes billed or rent-equivalent tax paid that exceeds 5 percent of household income. If household income is below \$12,000, the credit is for property taxes billed or rent-equivalent tax paid that exceeds a smaller portion of household income. Income below \$12,000 is divided into 12 ranges, each consisting of \$1,000 of household income. Each range corresponds with a percentage by which property taxes billed or rent-equivalent tax paid exceeds household income. For example, in the \$5,000 to \$5,999 household income range, the credit is for property taxes billed or rent-equivalent tax paid that exceeds 2.8 percent of household income, and for the \$9,000 to \$9,999 range, the figure is 4.2 percent. The property taxes billed or rent-equivalent tax paid that exceeds the designated percentage of household income is eligible for the credit. If household income is below \$1,999, the entire property taxes billed or rent-equivalent tax paid is eligible for the credit.

The credit phases out at the higher end of the income spectrum. For gross household income of \$35,000 to \$44,999, the credit is for property taxes billed or rent-equivalent tax paid that exceeds 5 percent of household income but the credit is reduced by a designated percentage. At \$35,000 to \$37,500 of gross household income, 40 percent of the credit

Elderly Homeowner/Renter Credit						
	Credit Claimed with Income Tax Return		Credit Claimed Without Income Tax Return		Total	
	N	\$	N	\$	N	\$
2005	16,850	\$7,971,363	7,534	\$3,609,244	24,384	\$11,580,607
2006	17,234	\$7,742,741	6,447	\$2,983,280	23,681	\$10,726,021
2007	17,545	\$7,829,406	4,536	\$1,981,220	22,081	\$9,810,626
2008	18,333	\$8,538,200	3,954	\$1,777,670	22,287	\$10,315,870
2009	18,489	\$8,614,797	6,790	\$2,966,034	25,279	\$11,580,831
2010	18,867	\$8,712,465	5,902	\$2,642,897	24,769	\$11,355,362
2011	18,135	\$8,282,747	5,684	\$2,508,178	23,820	\$10,790,925
2012	16,640	\$7,284,407	5,607	\$2,357,138	22,247	\$9,641,545
2013	15,351	\$6,699,687	4,714	\$1,788,207	20,365	\$8,487,894

is allowed. Each gross household income range increases by \$2,499, and the percentage of credit allowed decreases by 10 percentage points until reaching \$45,000 of gross household income, at which no credit is allowed.

The maximum credit an eligible taxpayer may receive is \$1,000, and the credit may be refunded to a taxpayer if the credit amount exceeds the income tax liability amount.

Impact to the General Fund

Taxpayers who are eligible for the elderly homeowner/renter credit pay their property taxes as they normally would: owners pay when the property tax bill is received, and renters pay indirectly through their monthly rent payments. This means that the taxing jurisdictions that levy property taxes—such as cities, counties, school districts, and the state for school equalization purposes—do not experience a reduction in property tax collections from the credit.

The credit is administered through the state's individual income tax, which means that general fund revenue is reduced by the amount of the credits issued each year. The accompanying table shows the number of credits claimed and the impact to the general fund for tax years 2005 through 2013. The figures for credits claimed without an income tax return show the number of taxpayers who claimed the credit by filing only Form 2EC. Because of their income levels, these taxpayers were not otherwise required to file an income tax form.

History of the Credit

The timeline at the right shows major legislative changes to the amount of the credit and to eligibility for the credit since its enactment in 1981.

The Montana Legislature has not made substantive changes to the credit since the 1999 changes but has considered bills in recent years to increase the maximum credit allowed. In addition, the 2015 Legislature considered two bills to revise eligibility for the credit: Senate Bill 194 and House Bill 287.

Neither of the bills became law, but both aimed to revise which properties are eligible for the credit. SB 194 removed the requirement that the taxpayer's dwelling be subject to property taxes, while HB 287 took a narrower approach by extending the credit to dwellings rented from a nursing home or assisted living facility regardless of whether the property is subject to property taxes.

- 1981 - \$150 Credit enacted
- 1983 - Increased maximum credit of \$400
- 1989 - Extended credit to residents of tax-exempt property rented from county/municipal housing authority
- 1995 - Increased credit to current level of \$1,000
- 1997 - Inserted \$35,000 gross household income limit for eligibility
- 1999 - Revised gross household income limit to \$45,000 with phase-out of credit for gross household income beginning at \$35,000

What Changed in 2013?

In spring 2014, the Department of Revenue informed the Revenue and Transportation Interim Committee of a compliance effort being undertaken by the department related to the elderly homeowner/renter credit.¹ While processing tax year 2013 income tax filings, the department realized that individuals residing in tax-exempt nursing homes were claiming and receiving the credit. After examining the statute, the department confirmed that individuals residing in tax-exempt nursing facilities are not eligible for the credit and it denied claims from these taxpayers. The department also notified previous credit recipients about eligibility criteria, educated tax preparers about the tax credit, and worked with tax-exempt nursing homes to inform residents of the eligibility requirements.

Current Activities Related to the Credit

The Revenue and Transportation Interim Committee chose to examine the elderly homeowner/renter credit as one of its 2015-2016 study topics, ranking the study second in a poll of 13 possible study topics. The study plan is based on Senate Joint Resolution 26 (2015), which passed the Senate but did not receive a hearing in the House before the Legislature adjourned. The committee has received information on the mechanics and history of the credit and at its March meeting will consider data that compare rates for nursing homes that are exempt from property taxes and ones that are not exempt.

One main topic the committee is considering is whether to extend the credit to residents of nursing homes that are exempt from property taxes. One view is that the credit is intended to offer property tax relief and that residents of exempt nursing homes should not be eligible because they do not pay property taxes. However, elderly citizens who rent property from county or city housing authorities are eligible for the credit, and the property rented is also exempt from property taxes. In addition to considering this issue, the committee could also consider whether to revise the amount of the credit or to make any changes to income eligibility, such as indexing the income levels to inflation.

¹ Mike Kadas, "Elderly Homeowner and Renter Credit Program" (memorandum), Department of Revenue, May 6, 2014.